

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANYA R. HUFF-NAVAL and U.S. POSTAL SERVICE,
BULK MAILING CENTER, Federal Way, WA

*Docket No. 03-1279; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to justify termination of appellant's benefits effective June 18, 2002; and (2) whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

On December 12, 1996 appellant, then a 26-year-old clerk, filed a claim alleging that on December 11, 1996, she injured her right shoulder, arm and fingers while in the performance of a light-duty position. She stopped work on December 13, 1996.

On February 14, 1997 the Office accepted the claim for right shoulder and arm sprain. The Office later included right shoulder impingement syndrome. Appellant was off work and received compensation benefits from December 11, 1996 until June 6, 1998, when she returned to a light-duty position.¹ On May 7, 2002 the Office issued a notice of proposed termination of benefits finding that the weight of the medical evidence of record established that appellant had no further disability for work or residuals requiring further medical treatment causally related to her December 11, 1996 work-related injury. By decision dated June 18, 2002, the Office terminated appellant's benefits, effective that day, on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her December 11, 1996 employment injury.

In a letter dated September 26, 2002, appellant requested reconsideration.

¹ Appellant initially worked an eight-hour day, but later worked four hours and then two hours a day. Her July 23, 1999 claim for lost wages from June 1998 to March 23, 1999 was denied by the Office on December 17, 1999. Appellant was also off work due to the birth of a child. On June 19, 1999 she began work in an eight-hour a day light-duty position.

In a decision dated October 28, 2002, the Office denied review of its June 18, 2002 decision.²

The Board finds that the Office met its burden of proof to terminate benefits effective June 18, 2002.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

In a report dated January 18, 2001, Dr. Richard Kirby, a Board-certified orthopedic surgeon, who began treating appellant in 1998, advised that appellant did not have “an identifiable condition caused by her December 11, 1996 injury,” and that “There are no objective findings related to her work-related diagnosis.” He noted that appellant’s complaints of pain could be related to her physique and the increased weight she is carrying through her shoulders, but that this condition was unrelated to her work-related injury.

The Board finds that the opinion of Dr. Kirby is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant’s work-related condition has ceased. Dr. Kirby found that appellant did not have any continuing condition caused by her December 11, 1996 injury and noted that there were no objective findings related to her work-related diagnosis. This opinion from appellant’s attending physician is sufficient to establish that her accepted employment-related injuries have resolved.

The Board further finds that the Office properly refused to reopen appellant’s case for merit review.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations which provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

² The Board notes that this case record contains evidence which was submitted subsequent to the Office’s October 28, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

Appellant's September 26, 2002 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any new medical evidence with her September 26, 2002 request for reconsideration. Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's September 26, 2002 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated October 28 and June 18, 2002 are hereby affirmed.⁷

Dated, Washington, DC
August 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ 20 C.F.R. § 10.608(b) (1999).

⁷ The Board notes that the record on appeal contains evidence that the Office received after it issued the January 23, 2003 decision denying reconsideration. The Board lacks jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *see James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).